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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,154	04/16/2004	Anne Sabbagh	06028.0046-00	7840
7590 08/29/2007				
Thomas L. Irving FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315		EXAMINER HOFFER, SUSANNA MARIE		
		ART UNIT 1609		PAPER NUMBER
		MAIL DATE 08/29/2007		DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/825,154

Applicant(s)

SABBAGH ET AL.

Examiner

Susanna Hoffer

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>29 Sep 2004, 19 June 2006</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirata (US 6,521,219) in view of Braida-Valerio et al. (US 6,076,530) and Maubru et al. (US 6,303,110).

Hirata teaches a method of repairing or restoring damaged hair by applying a nourishing composition to the hair and then compressing the hair shafts between plates heated to a temperature in the range of 130-180°C (abstract; col. 2, lines 17-18). The heated plates can be in the form of either a flat iron or a round, roller-type iron (col. 5, lines 47-57). Before applying the iron to the hair, the hair can be rinsed and dried (col.

9, lines 61-67). After applying the iron to the hair, a styling treatment, such as a permanent treatment may be conducted (col. 2, line 66-col. 3, line 3).

Hirata does not teach the use of a ceramides or reducing and oxidizing agents.

Braida-Valerio et al. teach a process for treating hair comprising applying to the hair a composition containing at least one amide compound which has at least one fatty chain and raising the temperature of the hair to at least 75°C, preferably from 85-150°C (abstract; col. 2, lines 16-17). The ceramide of formula (I) of the instant claims 7 and 8 is taught by Braida-Valerio et al. from col. 2, line 48 to col. 3, line 49). Braida-Valerio et al. also teach the use of N-oleoyldihydrosphingosine, N-palmitoyldihydrosphingosine, and N-stearoyldihydrosphingosine (col. 3, lines 40-45). The ceramide concentration is preferably from 0.001 to 10% (col. 3, lines 64-67). This process results in softer and smoother hair (abstract).

Maubru et al. teaches that the most common technique for obtaining permanent reshaping of the hair consists in opening the -S-S- disulfide bonds of keratin using a reducing agent, rinsing the hair, and then applying an oxidizing composition (col. 1, lines 13-23). Reducing agents useful for this purpose include thioglycolic acid, cysteamine, and cysteine and are generally present at a content ranging from 3-15%. Preferably, the pH of the reducing agent is between 6.5 and 10 (col. 5, lines 44-53).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Hirata's teachings with those of Braida-Valerio et al. because Hirata teaches a method of nourishing hair by heating a composition that has been applied to the hair and Braida-Valerio et al. teaches that hair benefits from heating

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a composition comprising ceramide. One would have been motivated to do this to achieve softness and smoothness in damaged hair. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Hirata's teachings with those of Maubru et al. because Hirata specifically teaches that a permanent treatment can be conducted after applying an iron to the hair and Maubru et al. teach that the most common technique for permanently reshaping the hair comprises application of a reducing and then oxidizing agent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna Hoffer whose telephone number is (571)272-9345. The examiner can normally be reached on Monday - Friday, 9:00 a.m.-5:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Stucker can be reached on (571)272-0911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMH



**MICHAEL MELLER**  
**PRIMARY EXAMINER**